

Before the  
**Federal Communications Commission**  
Washington, DC

In the Matter of:

<b>Modernizing the E-Rate Program for</b>	)	
<b>Schools and Libraries</b>	)	WC Docket No. 13-184
<b>Connect America Fund</b>	)	WC Docket No. 10-90
<b>Schools and Libraries Universal</b>	)	CC Docket No. 02-6
<b>Service Support Mechanism</b>	)	

**Reply Comment in Support of Petitions for Waiver by**  
**Boulder Valley School District**  
**Samuelson-Glushko Technology Law & Policy Clinic (TLPC)**

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## **Summary**

Commenters overwhelmingly support the Commission granting the Petitions under consideration in this proceeding. Commenters make clear that granting the Petitions will be a meaningful step towards bridging the Homework Gap and will encourage local leaders to adopt innovative solutions to this problem in their own communities.

Additionally, the record demonstrates that the program described in the BVSD Petition meets the Commission's educational purpose requirement, as having access to broadband at home is integral, immediate, and proximate to the education of students. The programs described in the Petitions similarly can meet the statutory demands of the Children's Internet Privacy Act where applicable.

Moreover, the record reflects that because the goals of the various Universal Service programs complement one another, the Commission's rules should have sufficient flexibility where innovative programs provide the most cost-effective means of achieving those goals. The conditions described in the Petitions offer sufficient safeguards to ensure maximization of Universal Service funds and to prevent waste.

Finally, commenters make clear the Wireless Competition Bureau may grant these Petitions on delegated authority, as they do not raise novel issues of law, fact, or policy that cannot be resolved under existing Commission precedent.

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## Discussion

Recent Petitions from the Samuelson-Glushko Technology Law & Policy Clinic on behalf of the Boulder Valley School District and from Microsoft ask the Commission, subject to certain conditions, to waive the cost-allocation requirements for off-campus use of E-Rate supported networks in order to bridge the Homework Gap for students currently lacking broadband internet at home.<sup>1</sup> The Boulder Valley School District (BVSD) and Samuelson-Glushko Technology Law and Policy Clinic respectfully submit these Reply Comments in response to initial comments on the Commission's September 19, 2016 Public Notice.<sup>2</sup>

The record strongly supports our request that the Commission grant the BVSD Petition to waive the cost allocation requirement in Rule 54.504(e) for off-campus use of BVSD's existing E-Rate supported broadband network and the joint Petition from Microsoft referenced in the Public Notice.

The Commission should grant the Petitions because the record shows that an overwhelming number of commenters have submitted well-reasoned and legally appropriate grounds to support them. Many commenters agree that the programs described in the BVSD Petition meet the educational purposes requirement of the Commission's E-Rate rules. BVSD can easily certify compliance with CIPA for any off-campus use of its E-Rate supported network. Many commenters believe that because the goals of the various universal service programs complement one another, the Commission's rules should offer sufficient flexibility where local, innovative projects are the most cost-effective means of achieving those goals. The BVSD Petition also offers sufficient

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<sup>1</sup> See Petition for Waiver on behalf of Boulder Valley School District Samuelson-Glushko Technology Law & Policy Clinic (TLPC), WC Docket No. 13-184, WC Docket No. 10-90 (submitted May 16, 2016) (BVSD Petition), <https://ecfsapi.fcc.gov/file/60001843683.pdf>; Joint Petition for Clarification or, in the Alternative, Waiver of Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation, Charlotte County Public Schools, Halifax County Public Schools, GCR Company, and Kinex Telecom, WC Docket No. 13-184 (submitted June 7, 2016) ("Microsoft Petition"), <https://ecfsapi.fcc.gov/file/60002098542.pdf>.

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Petitions Regarding Off-Campus Use of Existing E-Rate Supported Connectivity*, Public Notice, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (Sept. 19, 2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-16-1051A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1051A1.pdf) ("Public Notice").

safeguards against any over-provisioning of its E-Rate supported network. Finally, the Wireline Competition Bureau should grant these Petitions pursuant to its delegated authority, as the Petitions do not raise novel issues of law, fact, or policy.

**I. The Commission should grant the Petitions because an overwhelming majority of initial commenters support them.**

After releasing the Public Notice in September, the Commission received almost fifty comments on the Petitions, demonstrating demand around the country for solutions to bridge the Homework Gap with the Commission's help. An outpouring of support for the Petitions came from a wide range of commenters, including public interest organizations,<sup>3</sup> local school districts,<sup>4</sup> industry and trade organizations,<sup>5</sup> and interested individuals.<sup>6</sup> These commenters recognize that extending use of E-Rate supported networks off-campus under certain circumstances will not only "help to

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<sup>3</sup> See, e.g., Comments of the Benton Foundation, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (filed Nov. 3, 2016) ("Benton Comments"), <https://ecfsapi.fcc.gov/file/1104278939748/Benton%20Foundation%20E-Rate%20Comments.pdf>; Comments of New America's Technology Institute, Center for Rural Strategies, National Hispanic Media Coalition, Public Knowledge, X-Lab, and United Church of Christ, OC Inc., WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (filed Nov. 3, 2016) ("OTI, et al. Comments"), <https://ecfsapi.fcc.gov/file/110338893897/OTI%20et%20al%20E-rate%20Petition%20Comments%20Final.pdf>.

<sup>4</sup> See, e.g., Comments of Detroit Public Schools, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (filed Oct. 21, 2016) ("Detroit Public Schools Comments"), <https://ecfsapi.fcc.gov/file/10211927905555/DPS%20comments%20on%20FCC%20Internet%20at%20Home%20Final%2010-21-16.pdf>; Comments of Sacramento City Unified School District, WC Docket 13-184, WC Docket 10-90, CC Docket 02-6 (filed Nov. 3, 2016) ("Sacramento City Unified School District Comments"), <https://ecfsapi.fcc.gov/file/110388734865/SCUSD%20-%20FCC%2011.2.2016.pdf>.

<sup>5</sup> See, e.g., Comments of Dynamic Spectrum Alliance, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (filed Nov. 3, 2016) ("DSA Comments"), [https://ecfsapi.fcc.gov/file/1103123812185/DSA%20Comments%20on%20E-Rate%20TVWS%20Petition\\_11032016.pdf](https://ecfsapi.fcc.gov/file/1103123812185/DSA%20Comments%20on%20E-Rate%20TVWS%20Petition_11032016.pdf); Comments of Sprint Corporation, WC Docket 13-184, WC Docket 10-90, CC Docket 02-6 (filed Nov. 3, 2016) ("Sprint Comments"), <https://ecfsapi.fcc.gov/file/1103201695585/off%20campus%20erate.pdf>.

<sup>6</sup> See, e.g., Comments of Tim Miles, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (filed Nov. 2, 2016) ("Tim Miles Comments"), <https://ecfsapi.fcc.gov/file/110286728927/FCC%20Petition%20Comment%2011012016.pdf>; Comments of Krystle Brandt, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (filed Nov. 1, 2016) ("Krystle Brandt Comments"), <https://www.fcc.gov/ecfs/filing/11011772704801>.

address the homework gap . . . simplify program administration, and . . . not add to the USF cost burden,”<sup>7</sup> but also “ma[k]e a meaningful difference for the nation’s schools, particularly in our lowest income communities where the absence of high capacity broadband is not only a problem at school, but also at home.”<sup>8</sup>

It is significant that support for the Petitions comes from so many parties with varying goals, backgrounds, and relationships to the E-Rate program. A majority of those with stakes in bridging the digital divide and the E-Rate program believe that local innovation should and must play a key role to achieve the goals of universal service, and that the projects described in the Petitions are thoughtful and effective responses to these issues.

Because so many commenters recognize that the technological advancements and projects described in these Petitions can effectuate the E-Rate program’s goal of connecting students, the Commission should move expediently to grant them.

## **II. Off-campus use of BVSD’s E-Rate supported network subject to the conditions in its Petition meets the educational purposes requirement.**

A small group of industry commenters nevertheless argue that the Petitions “fail to identify how their proposals would ensure the statute’s [47 U.S.C. § 254(h)(1)(B)] ‘educational purposes’ mandate is satisfied.”<sup>9</sup> These commenters are concerned that the Petitions do not offer sufficient safeguards to ensure that any off-campus use of the E-Rate supported networks will be primarily for educational purposes.<sup>10</sup>

The E-Rate program’s governing statute, 47 U.S.C. § 254(h)(1)(B), requires that funds are to be used to “provide . . . services to elementary schools, secondary schools, and libraries for educational

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<sup>7</sup> Sprint Comments at 2.

<sup>8</sup> Comments of the State Educational Technology Directors Association, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (filed Nov. 3, 2016) (“SETDA Comments”), <https://www.fcc.gov/ecfs/filing/1103260677235/document/1103260677235ea6e>.

<sup>9</sup> USTelecom Comments at 6; *see also* WTA Comments at 5, Comments of ITTA-The Voice of Midsized Communications Companies, WC Docket 13-184, WC Docket 10-90, CC Docket 02-6 at 10 (filed Nov. 3, 2016) (“ITTA Comments”), <https://ecfsapi.fcc.gov/file/110395984791/ITTA%20Comments%20Against%20Petitions%20re%20%20Using%20E-rate%20at%20Home%20As%20Filed%20110316.pdf>.

<sup>10</sup> *See* USTelecom Comments at 6; WTA Comments at 5; ITTA Comments at 10.

purposes.”<sup>11</sup> The Commission’s rules define “educational purposes” as “activities that are integral, immediate, and proximate to the education of students.”<sup>12</sup>

Consistent with the educational purposes definition in Rule 54.500, BVSD’s Petition seeks to extend its self-provisioned network to students residing in Boulder’s low-income housing community for the purpose of ensuring that students lacking access may complete homework assignments during after-school hours. A great majority of commenters recognize that teachers are increasingly assigning homework online, and that having broadband access at home is essential for students’ educational success.<sup>13</sup> Boulder is no exception. Accordingly, off-campus use of BVSD’s E-Rate supported network subject to the conditions described in the Petition easily meets the Commission’s educational purposes requirement.

**A. Broadband is now essential for homework completion and education continues outside of the school walls and beyond the school day.**

As commenter EveryoneOn notes, the E-Rate program has proven extremely successful in achieving its goal of in-school connectivity, with over 77 percent of school districts providing high-speed connectivity in 2015.<sup>14</sup> However, the transition in education to digital learning requires that the E-Rate program adapt its rules to continue its mission, including confronting the Homework Gap.

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<sup>11</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>12</sup> 47 C.F.R. § 54.500.

<sup>13</sup> See Comments of Voices on the Net Coalition, WC Docket 13-184, WC Docket 10-90, CC Docket 02-6 at 2 (filed Nov. 3, 2016) (“Voices on the Net Coalition Comments”), [https://ecfsapi.fcc.gov/file/1103127249253/2016\\_11\\_03\\_VON\\_Comments\\_on\\_E-rate\\_Petitions.pdf](https://ecfsapi.fcc.gov/file/1103127249253/2016_11_03_VON_Comments_on_E-rate_Petitions.pdf); see also Sprint Comments at 2; Comments of the Schools, Health, and Libraries Broadband Coalition, National Digital Inclusion Alliance, Gigabit Libraries Network, Kellogg & Sovereign Consulting, LLC, and Mobile Beacon, WC Docket 13-184, WC Docket 10-90, CC Docket 02-6 at 3 (filed Nov. 3, 2016) (“SHLB, et al. Comments”), <https://ecfsapi.fcc.gov/file/110350558670/SHLB%20et%20al%20Comments%20-%20Boulder-Msoft%20Petitions%20-%20Final.pdf>; Comments of the Benton Foundation, WC Docket 13-184, WC Docket 10-90, CC Docket 02-6 at 2 (filed Nov. 3, 2016) (“Benton Comments”), <https://ecfsapi.fcc.gov/file/1104278939748/Benton%20Foundation%20E-Rate%20Comments.pdf>.

<sup>14</sup> Comments of EveryoneOn, WC Docket 13-184, WC Docket 10-90, CC Docket 02-6 at 2 (filed Nov. 3, 2016) (“EveryoneOn Comments”), <https://ecfsapi.fcc.gov/file/11031969301688/EveryoneOn%20Comments%E2%80%9393DA%2016-1051.pdf> (citing *State of the States Report, 2015: A report on the state of broadband connectivity in America’s public schools*, Education SuperHighway, November 2015).

Many schools around the country have already devised innovative solutions to address the Homework Gap that ensure children have the access at home that they need to continue their studies and their homework outside of school hours, such as providing hotspots around the community, providing children with broadband-connected devices, and the creation of WiFi “activity buses” that allow children to complete online homework during long commutes to school.<sup>15</sup> These programs all have one thing in common: ensuring that students have access to high-speed broadband while off-campus so they have the tools to pursue digital learning.

Furthermore, there are numerous ways the Commission can ensure that the educational purpose requirement is met. Indeed, the Microsoft Petition notes that the network it seeks to extend for limited off-campus use will be protected, requiring login credentials provided by the school to gain access.<sup>16</sup> Using this type of authentication process ensures that students will have access to the same secure internet connection as they would have at school.

Just as the Commission required the local internet service provider “to demonstrate the effectiveness of how it will restrict service to the designated hours” as a condition for its grant of waiver of its cost allocation rule to certain communities in Alaska in 2001, the Commission could similarly require any school district seeking to extend its E-Rate supported network for off-campus use to demonstrate how it will ensure compliance with the educational purposes requirement.<sup>17</sup>

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[http://stateofthestates.educationsuperhighway.org/assets/sos/full\\_report-55ba0a64dcae0611b15ba9960429d323e2eadbac5a67a0b369bedbb8cf15ddbb.pdf](http://stateofthestates.educationsuperhighway.org/assets/sos/full_report-55ba0a64dcae0611b15ba9960429d323e2eadbac5a67a0b369bedbb8cf15ddbb.pdf)).

<sup>15</sup> See OTI, et al. Comments at 6-8.

<sup>16</sup> Microsoft Petition at 10.

<sup>17</sup> See *Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling*, Order, CC Docket No. 96-45, 16 FCC Rcd. 21, 511 at ¶ 16 (Dec. 3, 2001) (“Alaska Order”), [http://library.alaska.gov/pdf/erate/Alaska\\_Waiver.pdf](http://library.alaska.gov/pdf/erate/Alaska_Waiver.pdf).



**B. Extending BVSD's network to students lacking access is integral, immediate, and proximate to the education of students.**

As many commenters noted, a PEW Research study found that 7 in 10 teachers now assign homework online.<sup>18</sup> Accordingly, having access to broadband internet service after school hours at home is essential for homework completion, which may take up much of a student's evening if one considers athletics and other extra-curricular activities. Other than in-class instruction, there is likely nothing more integral to a student's education than practicing concepts and learning material by completing homework.

Indeed, the Commission implied in its Public Notice that it has already made efforts to extend E-Rate supported networks off-campus to students lacking access, and how such services can be integral, immediate, and proximate to the education of students.<sup>19</sup> The Commission's Learning-on-the-Go Pilot program "dedicated approximately \$9 million . . . to 20 initiatives ranging from off-campus access to e-textbooks for students; to connectivity for netbooks for students living in remote, isolated areas; and to access to flexible, online education programs for home-bound students unable to attend classes because of medical challenges."<sup>20</sup> In initiating this pilot program, the Commission recognized that the E-Rate program can support creative local efforts to ensure students can complete learning off-campus.

Because students' learning now occurs online more often than not, extending BVSD's internet service to students who lack it at home is unequivocally "integral, immediate, and proximate" to these students' education, as required by the Commission's definition of educational purposes.<sup>21</sup> As EveryoneOn notes, "[t]he educational mission of E-rate cannot be fulfilled if only applied within schools. Education continues outside of the school walls and beyond the school day."<sup>22</sup>

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<sup>18</sup> John B. Horrigan, *The numbers behind the broadband 'homework gap'*, PewResearchCenter (Apr. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap>.

<sup>19</sup> See Public Notice at 1-2 (describing the Commission's Learning-on-the-Go pilot program).

<sup>20</sup> *Id.* (citing *E-rate Deployed Ubiquitously 2011 Pilot Program*, WC Docket No. 10-222, Order, 26 FCC Rcd 9526 (WCB 2011)).

<sup>21</sup> 47 C.F.R. § 54.500.

<sup>22</sup> EveryoneOn Comments at 2.

### **III. BVSD can ensure CIPA compliance for any off-campus use of its E-Rate supported network.**

A small minority of commenters are concerned that the Petitions do not offer sufficient assurance that off-campus use of E-Rate supported networks will comply with CIPA.<sup>23</sup> One commenter questions whether the school district would administer the CIPA filtering technology, and whether the school has authority to do so in private residential settings.<sup>24</sup> Another argues that even if schools use the filtering technology during off-campus hours, “such filtering will do little to prevent widespread use of E-rate-funded Internet for non-education purposes . . .”<sup>25</sup>

In enacting Section 254 of the Communications Act to establish the E-Rate Program, Congress conditioned the provision of E-Rate funds upon schools’ and libraries’ compliance with the Children’s Internet Protection Act (“CIPA”).<sup>26</sup> This condition was designed to “address concerns about children’s access to obscene or harmful content over the Internet,” while using school and library networks.<sup>27</sup>

As USTelecom acknowledges, the Commission may include CIPA compliance provisions as a condition for grant of this waiver.<sup>28</sup> School districts with existing E-Rate supported networks such as BVSD already certify compliance with CIPA, and any off-campus use would be provided using that same network. Thus, there is no reason why this type of use poses any significant CIPA compliance concerns. Indeed, a vast majority of commenters, including industry groups, school districts, and public interest organizations acknowledge that compliance with CIPA under the conditions described in the Petitions is completely feasible.<sup>29</sup>

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<sup>23</sup> See USTelecom Comments at 13; see also WTA Comments at 10; ITTA Comments at 13.

<sup>24</sup> See USTelecom Comments at 13.

<sup>25</sup> WTA Comments at 11.

<sup>26</sup> See Pub. L. No. 106-554 (“CIPA”); 47 U.S.C. §254(h)(5).

<sup>27</sup> *Children’s Internet Protection Act*, Fed. Comm’n Comm’n October 25, 2016, <https://www.fcc.gov/consumers/guides/childrens-internet-protection-act>.

<sup>28</sup> See USTelecom Comments at 14.

<sup>29</sup> Comments of California County Superintendents Educational Services Association, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (filed Nov. 3, 2016) (“CCSEA Comments”), <https://www.fcc.gov/ecfs/filing/110349322054>; see also Comments of Final Mile Communications, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 at 1 (filed Nov. 3, 2016) (“Final Mile Comments”),

**IV. Because the goals of the Commission’s USF programs complement one another, the rules should provide flexibility where innovative projects provide the most cost-effective means of meeting those goals.**

A few commenters express concern that other Universal Service Fund (USF) programs, such as Lifeline, are better suited to address the Homework Gap than the E-Rate projects described in the Petitions.<sup>30</sup> They argue that “grant of the Petitions would attempt to solve with E-rate funds problems that Congress intended the High-Cost and Lifeline programs . . . to tackle.”<sup>31</sup>

The Communications Act established the USF and its affiliated programs in order to achieve “affordable, nationwide telephone service to include among other things rural health care providers and eligible schools and libraries.”<sup>32</sup> These programs have evolved over time to keep up with changing technology, including transitioning support from telephone service to high-speed broadband.<sup>33</sup>

Though the Commission divided the USF into several programs to meet different universal service demands, including High-Cost Support (Connect America Fund), Low Income Support (Lifeline), Rural Health Care, and Schools and Libraries Support (E-Rate), these programs all have the same mission: universal service.<sup>34</sup>

It should be no surprise, then, that there will be instances where the goals of these programs may overlap. For instance, when a rural health care facility seeks to extend its network to a nearby technical school in a hands-on teaching partnership program, the Rural Health Care or E-Rate programs may both offer options to achieve these organizations’ connectivity goals. When a school

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<https://ecfsapi.fcc.gov/file/110368924466/110316%20FMC%20Submitted%20Comments%20DA-16-1051A1.pdf>; OTI, et al. Comments at 9.

<sup>30</sup> See USTelecom Comments at 18; see also Comments of NTCA The Rural Broadband Association, WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 at 7 (filed Nov. 3, 2016) (“NTCA Comments”),

<https://ecfsapi.fcc.gov/file/110384246413/11.03.16%20NTCA%20Comments%20on%20Microsoft%20and%20Boulder%20Valley%20E-Rate%20Petitions,%20WC%202013-184,%202010-90%20and%20CC%2002-6.pdf>.

<sup>31</sup> NTCA Comments at 7.

<sup>32</sup> *Universal Service Fund*, Fed. Comm’n’s Comm’n, <https://www.fcc.gov/general/universal-service-fund> (last visited Nov. 20, 2016).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

wants to connect students living in nearby low-income housing communities so they can pursue their digital learning off campus, both the E-Rate and Lifeline programs may provide mechanisms for achieving this goal. One program need not stand exclusively of the others where the goals of universal service are the same.

Because the goals of the individual USF programs inevitably complement one another, the best way to ensure that the USF is operated most efficiently is to allow flexibility in the rules under specific circumstances when creative local efforts may provide the most cost-effective means of achieving universal service. Indeed, the Commission noted in the *Second E-Rate Modernization Order* that one of its goals is “[m]aximizing the cost-effectiveness of spending for E-rate supported purchases.”<sup>35</sup>

In the case of BVSD, allowing the small number of students living in the low-income housing community and lacking internet access to use the school’s self-provisioned network after school hours to complete homework assignments can maximize the value of the network during times when it would normally be unused. As noted in the Petition, “[s]elf-provisioned networks are not like electric wiring; broadband capacity cannot be switched off like a light to save money.”<sup>36</sup> Furthermore, as this creative program can provide service at no additional cost to BVSD, the USF, or the students themselves, the project presently offers a more effective solution to bridge the Homework Gap than other USF programs.

While all of the USF programs provide vital solutions to ensuring connectivity for everyone in the United States, recognizing and adapting the rules where the goals of the different programs merge is an important step forward in continuing the mission of universal service.

**V. Because there is less network demand during after-school hours, there is no risk of school-district over-provisioning.**

A small minority of commenters speculate that allowing any off-campus use of E-Rate supported networks would incentivize school districts to over-provision service to account for

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<sup>35</sup> *Summary of the E-Rate Modernization Order*, Fed. Commc’ns Comm’n, <https://www.fcc.gov/general/summary-e-rate-modernization-order> (last visited Nov. 20, 2016).

<sup>36</sup> BVSD Petition at 6.

increased demand resulting from the off-campus use.<sup>37</sup> They suggest that “in order to satisfy other community demands, eligible schools and libraries will purchase more services than they need to support on-campus activities.”<sup>38</sup>

In adopting the *Second E-Rate Modernization Order* in 2012, several Commissioners noted that ensuring the program’s continued success requires that measures be put in place to prevent waste, fraud, and abuse.<sup>39</sup> This means ensuring that schools and libraries only request (and be granted) funding that reflects the actual needs of the beneficiary.<sup>40</sup>

These concerns are unfounded in the context of this waiver request. First, during after-school hours, the students who will potentially use an E-Rate supported network will always use less than the capacity for which the network was designed, as these networks must meet the demands of an entire school district during peak hours. Because this Petition limits access to the network to those students who do not already have internet access at home, and some students already have internet access at their homes and will not use the E-Rate supported network, there is essentially no possibility that there will be any increased demand on the network relative to the school day.

Furthermore, the Petition itself conditions grant of the waiver upon certification that “the school has not requested more services than are necessary for *on-campus* educational purposes.”<sup>41</sup> This condition specifically qualifies that the school is not permitted to request additional funding, or any funding it anticipates it will need for services to support an off-campus program. The Commission’s rules already require school districts to justify the “units” (or connections) to support its campus’ connectivity needs for educational purposes, including the number of students and

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<sup>37</sup> See USTelecom Comments at 16; see also ITTA Comments at 13.

<sup>38</sup> USTelecom Comments at 16.

<sup>39</sup> See e.g., Statement of Commissioner Michael O’Rielly, *Second E-rate Modernization Order*, 29 FCC Rcd. 15538, 15641; see also Statement of Commissioner Ajit Pai, *Second E-Rate Modernization Order*, 29 FCC Rcd. at 15637.

<sup>40</sup> See Statement of Commissioner Ajit Pai, 29 FCC Rcd. at 15637.

<sup>41</sup> BVSD Petition at i (emphasis added).

devices needed.<sup>42</sup> Any school seeking to implement a program to extend this network for off-campus educational purposes would thus be required to exclude any associated costs from its funding request. This condition provides a reasonable safeguard from potential “gold-plating” of E-Rate supported networks, and is designed to reinforce that BVSD’s program to connect its fiber ring to its low-income students lacking access will maximize the efficiency of, and not expand, its E-Rate supported network.

Because the program described in the Petition will not increase network demand during after-school hours, and the Petition enumerates safeguards against potential gold-plating, the concerns of school-district over-provisioning are unfounded.<sup>43</sup>

**VI. The Wireline Competition Bureau has authority to grant the Petition because it does not raise a novel issue of law, fact, or policy.**

Finally, a small group of commenters argue that the Petition raises novel questions of law because granting a waiver of the cost-allocation rule asks the Bureau to consider “whether E-Rate supported networks and services should be expanded beyond each school facilities’ geographic footprints and into purely residential settings.”<sup>44</sup> In the same vein, they comment that a comparison to the Commission’s previous grant of waiver of the cost-allocation rule in the 2001 Alaska Order is inappropriate due to factual distinctions in the availability of internet access.<sup>45</sup> They also argue that the Petition makes no guarantee that “prospective student households will include only those households lacking any available Internet access service.”<sup>46</sup>

The Wireline Competition Bureau (the Bureau) has the authority to perform all Bureau functions, including the ability to “[a]ct on requests for interpretation or waiver of rules.”<sup>47</sup> An issue specific to Wireline matters must be decided by the full Commission only when it presents “novel

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<sup>42</sup> See 47 C.F.R. § 54.504(a) (detailing application process for E-Rate funding); *see also Schools and Libraries Universal Service Description of Services Ordered and Certification Form 471*, Universal Service Administration Company, [http://www.usac.org/\\_res/documents/sl/pdf/forms/471\\_fy05.pdf](http://www.usac.org/_res/documents/sl/pdf/forms/471_fy05.pdf).

<sup>43</sup> See BVSD Petition at 3.

<sup>44</sup> USTelecom Comments at 7; *see also* WTA Comments at 7.

<sup>45</sup> *See generally* Alaska Order; *see* USTelecom Comments at 21.

<sup>46</sup> WTA Comments at 8.

<sup>47</sup> 47 C.F.R. § 0.291; 47 C.F.R. § 0.91.

questions of law, fact or policy which cannot be resolved under outstanding precedents and guidelines.”<sup>48</sup>

Because the Bureau has previously granted a waiver of the cost-allocation rule for off-campus use of an E-Rate supported network, and the Petition itself conditions waiver only in cases where student families do not already have Internet access at home, the Bureau may grant this Petition on its delegated authority.

**A. The Alaska Order provides precedent for the Bureau to grant this Petition because the Commission previously waived the cost-allocation rule for off-campus use of E-Rate supported networks where beneficiaries of the off-campus use did not already have Internet access.**

In the 2001 Alaska Order, the Commission granted a waiver of the cost-allocation rule where no local access was available and where such provision would not come at an additional cost to the USF.<sup>49</sup> The BVSD Petition asks the Commission for waiver under similar conditions, including “where student families do not already have Internet access at home and the service imposes no additional cost to the Universal Service Fund (USF).”<sup>50</sup> Because the BVSD Petition asks the Commission to grant waiver under similar conditions as were granted in 2001, and requests that relief under narrower circumstances, it does not raise a novel issue of law, fact, or policy, and the Alaska Order therefore provides precedent for the Bureau to grant the Petition on its delegated authority.

The Alaska Order provided a means for those in rural Alaska who lacked access to broadband at home to use schools’ and libraries’ E-Rate supported broadband networks while off-campus.<sup>51</sup> While the specific circumstances as to why those communities in the Alaska Order lacked access may differ from those students who lack it in Boulder, granting this Petition would similarly provide a means for students in Boulder’s low-income housing community who lack access to broadband at

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<sup>48</sup> 47 C.F.R. § 0.291(a)(2).

<sup>49</sup> See Alaska Order at ¶ 6.

<sup>50</sup> BVSD Petition at 1.

<sup>51</sup> See *generally* Alaska Order.

home a means to use BVSD's E-Rate supported broadband network while off-campus to complete their digital learning.

**B. The Petition requests a waiver under narrower circumstances than the Alaska Order.**

In the Alaska Order, the Commission granted the petitioners' request to waive its educational purposes requirement in addition to the cost-allocation rule.<sup>52</sup> The Petition does not go as far, as any off-campus use of the school's E-Rate supported network will be used in conformity with 47 U.S.C. § 254(h)(1)(B), which requires all E-Rate supported networks to be used primarily for educational purposes. Accordingly, this Petition merely asks the Commission to waive the cost-allocation rule for off-campus use of its E-Rate network under the circumstances described in its petition.

\* \* \*

As the record conclusively demonstrates, having broadband access at home is imperative for a student's academic success in the digital age. Granting these Petitions would constitute a great step forward in promoting digital equality and closing the Homework gap. Due to the overwhelming support for the programs described in these Petitions, the Commission should grant them in an expedient manner and subject to the conditions described therein.

Respectfully submitted,

/s/

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<sup>52</sup> See *id.* at ¶¶ 5, 16.